



IFW

Serial No. 10/823,547

Docket No.: 1572.1257

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Tae-Yong KWON, et al.

Serial No. 10/823,547

Group Art Unit: 1763

Confirmation No. 4395

Filed: April 14, 2004

Examiner: Crowell, Anna M.

For: PLASMA ETCHING APPARATUS

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

This is responsive to the Office Action mailed September 30, 2004, having a shortened period for response set to expire on October 30, 2004, the following remarks are provided.

I. Provisional Election of Claims Pursuant to 37 CFR §1.142

Applicants provisionally elect **Group I, claims 1 and 5-17** in response to the preliminary restriction requirement set forth in the Office Action.

II. Applicants Traverse the Requirement

Insofar as Group I is concerned, it is believed that claims 1-2 and 4-17 are so closely related to elected claims 1 and 5-17 that they should remain in the same application. Further, if the Examiner has determined Figures 3 and 4 to be of different species, and the Applicant respectfully submits that they are not, then a further Group III, including claims 1 and 3-17, may also be recognized. The Applicant further submits that the Group III claims are so closely related to the Groups I and II claims that they should also remain in the same application.

The elected claims 1 and 5-17 are directed to a plasma etching apparatus having an upper electrode and a lower electrode wherein a distance between the upper electrode and the lower electrode varies discontinuously on a portion of opposite surfaces of the electrodes by varying the shape of the upper electrode. The Group II claims 1-2 and 4-17 are drawn to the

upper and lower electrodes as discussed in the Group I claims, wherein the distance between the upper and lower electrodes varies discontinuously on a majority of the opposite surfaces of the electrodes. The Group III claims 1 and 3-17 are drawn to the upper and lower electrodes as discussed in the Group I claims, wherein the distance between the upper and lower electrodes varies discontinuously on an entirety of the opposite surfaces of the electrodes. There have been no references cited to show any necessity for requiring restriction and, in fact, it is believed that the Examiner would find references containing all three groups of claims in the same field of technology. It is believed, moreover, that evaluation of all of these groups of claims would not provide an undue burden upon the Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter recited by the Groups II and III claims by filing one or more divisional applications.

MPEP §803 sets forth the criteria for restriction between patentably distinct inventions. (A) indicates that the inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05-806.05(i)); and (B) indicates that there must be a serious burden on the Examiner if restriction is required (see MPEP §803.02, §806.04(a)- §806.04(i), §808.01(a) and §808.02). The Examiner has not set forth why there would be a serious burden if restriction is required.

III. Conclusion

Upon review of references involved in this field of technology, when considering that the apparatus recited by all three groups of claims is directed to a plasma etching apparatus having an upper electrode and a lower electrode wherein a distance between the upper electrode and the lower electrode varies discontinuously on a portion of opposite surfaces of the electrodes by varying the shape of the upper electrode, and when all of the other various facts are taken into consideration, it is believed that upon reconsideration of the Examiner's initial restriction requirement, all of the pending claims should be examined in the subject application.

In view of the foregoing amendments, arguments and remarks, all claims are deemed to be allowable and this application is believed to be in condition for allowance.

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If any further fees are required in connection with the filing of this Amendment, please charge the same to our deposit account number 19-3935.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 10/22/04

By: Thomas L. Jones
Thomas L. Jones
Registration No. 53,908

1201 New York Ave, N.W., Ste. 700
Washington, D.C. 20005
(202) 434-1500